

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

CUCINO CORPORATION,

Respondent.

**Docket No. FMCSA-2007-29322¹
(Eastern Service Center)**

FINAL ORDER

1. Background

On July 17, 2007, the Field Administrator for the Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA) (Claimant) issued a Notice of Claim (NOC) against Cucino Corporation (Respondent) following a compliance review of Respondent conducted on July 3, 2007.² The NOC charged Respondent with one violation of 49 CFR 382.301(a), using a driver before the motor carrier has received a negative pre-employment controlled substances test result, with a proposed civil penalty of \$4,970; and nine violations of 49 CFR 396.11(a), failing to require a driver to prepare a driver vehicle inspection report, with a proposed civil penalty of \$830 per count. The NOC proposed a total civil penalty of \$12,440.

Respondent replied to the NOC on July 26, 2007. It denied all 10 violations alleged in the NOC on the ground that the FMCSA safety investigator conducting the

¹ The prior case number was RI-2007-0046-US0042.

² Exhibit A to Field Administrator's Objection to Respondent's Request for Hearing and Motion to Enter Default Final Order for Failure to File Adequate Reply in Accordance with 49 CFR 386.14 (hereafter Motion for Default).

compliance review had advised Respondent that the time frame for the review would be limited to calendar year 2006.³ It requested informal adjudication in the form of an informal hearing.

On September 24, 2007, Claimant objected to Respondent's request for an informal hearing and moved for entry of an order of default declaring the NOC, including the civil penalty, as the final agency order in the proceeding. Claimant argued that Respondent should be found in default because its reply was so deficient as to constitute a failure to reply. Respondent did not reply to the Motion.

2. Decision

Section 386.14(b) of the Agency's Rules of Practice requires a respondent, in replying to an NOC, to either pay the full amount of the claim, contest the claim by requesting administrative adjudication or seek binding arbitration regarding the proposed civil penalty. Although Respondent requested administrative adjudication, it failed to contest the substance of the claim, as required by § 386.14(d)(1). According to that section, "[a]ny allegation in the claim not specifically denied in the reply is deemed admitted. A mere general denial of the claim is insufficient and may result in a default being entered by the Agency decisionmaker upon motion by the Field Administrator."

The sole basis for Respondent's denial of the charges in the NOC is that the violations occurred in 2007 and were thus beyond the time frame of the compliance review. Respondent's argument that it should not be charged with any 2007 violations does not constitute an affirmative defense. As Claimant points out, FMCSA regulations do not limit the time period that may be reviewed during a compliance review.

³ Exhibit B to Motion for Default.

Moreover, with one exception, all of the alleged violations occurred before June 25, 2007, the date Respondent claims it was first contacted about the compliance review.⁴ Respondent's argument that it should not be held accountable for violations simply because they occurred in 2007 is specious and in direct contradiction with FMCSA's mission to ensure that motor carriers operate safely. If anything, more recent violations are cause for even greater concern because they represent a more up-to-date snapshot of a carrier's compliance with the safety regulations.

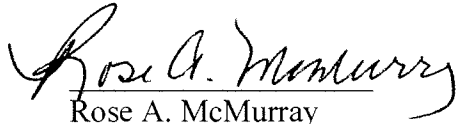
Once a respondent has admitted violations for which he is charged, he should choose to either pay the full amount of the civil penalty or seek binding arbitration on the amount of the civil penalty and/or the length of time in which to pay it.⁵ Because Respondent chose neither option, Claimant's Motion for Default will be granted. Respondent's default makes the NOC, including the civil penalty proposed in the NOC, the Final Agency Order in this proceeding.

THEREFORE, *It Is Hereby Ordered That*, Respondent pay to the Field Administrator for the Eastern Service Center, within 30 days of the service date of this Final Order, a total civil penalty of \$12,440 for ten violations of the Federal Motor Carrier Safety Regulations. Payment may be made electronically through FMCSA's registration site at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check,

⁴ The alleged § 382.301(a) violation occurred on June 25, 2007.

⁵ See *In the Matter of Archie Palmer*, Docket No. FMCSA-2007-26787, Final Order, May 11, 2007. Respondent did not challenge the amount of the civil penalty.

certified check, or money order may be remitted to the Claimant at the address shown in the Certificate of Service.⁶



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

6.24.10
Date

⁶ Pursuant to 49 CFR 386.64, a petition for reconsideration may be submitted within 20 days of the issuance of this Final Order.

CERTIFICATE OF SERVICE

This is to certify that on this 1 day of July, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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